

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7211

BILL NUMBER: HB 1406

NOTE PREPARED: Feb 22, 2005

BILL AMENDED: Feb 21, 2005

SUBJECT: Alcoholic Beverage Matters.

FIRST AUTHOR: Rep. Whetstone

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Alcohol Permit and Tobacco Certificate Changes:* The bill increases the term of a retailer's or dealer's permit to two years (instead of one year). It increases the following permit fees:

- (1) One-way retailer's or dealer's permit to \$750 biennially.
- (2) Two-way retailer's or dealer's permit to \$1,250 biennially.
- (3) Three-way retailer's or dealer's permit to \$2000 biennially.

It makes the following changes with respect to a supplemental retailer's permit:

- (1) Eliminates the gross food sales requirement.
- (2) Makes all supplemental retailer permits \$3,000 biennially.
- (3) Increases the term of a permit to two years.

The bill increases the fee for a temporary bartender's permit to \$10.

It also increases the fee for an employee's permit used to perform volunteer service from \$5 to \$15, and repeals the fee for an employee's permit not used to perform volunteer service.

The bill provides that the Alcohol and Tobacco Commission (ATC) may suspend a permit if the permit holder has not paid the seller of the permit in accordance with the terms of the sale and the seller has obtained a judgment.

The bill allows the ATC to issue a three-way permit to a restaurant in an economic development district in Jeffersonville and Clarksville. The bill provides that fees collected for the issuance of a permit are deposited in the Enforcement and Administration Fund of the Commission.

It increases the fee for a tobacco certificate to \$200 and the term of a certificate from one to three years. It makes it a Class A infraction for a person to sell or distribute tobacco products to a tobacco retailer who does not hold a valid tobacco sales certificate.

Permit Fee Distributions: This bill changes the distribution of the Excise Fund to provide that 40% of the fund is deposited in the Enforcement and Administration Fund (Fund), 25% is distributed to the state General Fund, and 25% is distributed to municipal governments. It provides that 50% of other alcoholic beverage permit fees are deposited in the Fund.

Notice Requirements: The bill eliminates the requirement that the ATC publish notice of a new retailer's or dealer's permit and notice of investigation. The bill also repeals provisions concerning publication of notice and food sales requirements for issuance of a supplemental retailer's permit.

Samples from Retailers/Dealers: The bill allows a beer retailer to permit customers to sample beer and flavored malt beverages. It allows a liquor retailer or dealer to allow customers to sample flavored malt beverage.

Supervision of Sales: This bill requires all alcoholic beverage sales by a drug store or a grocery store to be by or under the direct supervision of a person who holds an employee's permit.

Primary Source of Supply: The bill provides that if a primary source of supply acquires the rights to a product and decides not to have a beer wholesaler continue to distribute the product, the wholesaler must be compensated for the loss of the right to distribute the product or the wholesaler will continue to distribute the product.

Wholesaler Discounts: It allows a beer wholesaler to offer a special discount price to a beer dealer or beer retailer if the beer or flavored malt beverage is a brand or package the beer wholesaler has discontinued or the beer or flavored malt beverage will expire within a certain date.

Manufacturer Incentives: It also allows a manufacturer of alcoholic beverages to offer on a nondiscriminatory basis bona fide incentives to wholesalers if the incentives are determined based on sales to retailers or dealers occurring during specified times and for specified products.

Effective Date: Upon passage; July 1, 2005.

Explanation of State Expenditures: (Revised) *Summary of Expenditures:* This bill will have an administrative cost impact on the Alcohol and Tobacco Commission (ATC). The Indiana State Excise Police (ISEP) is the law enforcement division of the ATC. The provisions of this bill could cause an increase in enforcement costs to ISEP. It is presumed that the increase could be covered through the use of existing staff and resources. In addition, the bill would generate revenue through an increase in permit fees, which will help to offset the ATC and ISEP increased administrative costs.

An increase in enforcement costs to the ISEP would be as a result of the following provisions of the bill:

Samples from Retailers/Dealers;
Supervision of Sales;
Primary Source of Supply;
Wholesaler Discounts;
Manufacturer Incentives.

All of these sections represent new rights or restrictions for the alcoholic beverage industry. The creation of these new rights and restrictions could increase the burden on the ISEP by requiring them to monitor procedures of the industry that they currently do not monitor. It should be noted that the raising of fees should provide the ATC the funds to cover any additional regulatory costs incurred under these provisions.

Alcohol Permit and Tobacco Certificate Changes: This bill increases the term for retailer, dealer, and supplemental permits from 1 year to 2 years. Increasing the terms of these permits will result in a savings to the ATC. For example, instead of renewing a retailer permit 4 times in a 4-year period, the ATC will only have to renew the permit twice. The bill also changes the term for a tobacco certificate from 1 to 3 years.

Notice Requirements: This bill eliminates the notice requirements relating to the issuance of alcoholic beverage permits by the ATC. The elimination of these requirements will result in a savings to the ATC.

Explanation of State Revenues: (Revised) *Summary of Revenues:* This bill increases several of the alcoholic beverage permit fees, as well as increasing the fee for a tobacco certificate. Assuming the number of permits issued remains constant the additional revenue that will be generated per FY is approximately \$5.7 M.

Alcohol Permit and Tobacco Certificate Changes: This bill increases several alcohol permit fees, increases the tobacco certificate fee, and repeals the employee permit fee. The table below illustrates the changes to fees as well as the changes to the permit renewal terms.

| <i>Permit</i> | <i>Current Fee</i> | <i>New Fee</i> | <i>Current Term (yrs.)</i> | <i>New Term (yrs.)</i> |
|---------------------------------------|--------------------|----------------|----------------------------|------------------------|
| <i>Dealer/Retailer Permits</i> | | | | |
| <i>1-way</i> | \$250 | \$750 | 1 | 2 |
| <i>2-way</i> | \$500 | \$1,250 | 1 | 2 |
| <i>3-way</i> | \$750 | \$2,000 | 1 | 2 |
| <i>Supplemental Retailer</i> | \$1,500 | \$3,000 | 1 | 2 |
| <i>Salesperson Permit</i> | \$20 | \$100 | 2 | 4 |
| <i>Temp. Bartender Permit</i> | \$4 | \$10 | NA | NA |
| <i>Volunteer Permit</i> | \$5 | \$15 | 2 | 2 |
| <i>Tobacco Certificate</i> | \$50 | \$200 | 1 | 3 |
| <i>Employee Permit</i> | \$30 | \$0 | 2 | 2 |

The total new revenue generated by the increase in fees is estimated at approximately \$5.7 M.

This bill also makes it a Class A infraction for a person to sell or distribute tobacco products to a tobacco retailer who does not hold a valid tobacco sales certificate. The maximum judgment for a Class A infraction

is \$10,000, which would be deposited in the state General Fund. However, any additional revenue is likely to be small.

The bill also allows the ATC to grant 5 additional 3-way permits each to Clarksville and Jeffersonville, and these permits would be granted outside the current permit quota restrictions. The bill makes the initial fee for these permits \$25,000 and the renewal fee \$5,000. The increase in revenue will depend on when these 10 additional permits are granted. The highest increase in revenue for FY 2006 would be \$250,000.

Permit Fee Distributions: This bill changes the way that permit fees and tobacco certificate fees are distributed. The overall yearly impact on the various funds is as follows:

- the state General Fund will receive an additional \$1.1 M.
- the Enforcement and Administration Fund (Enforcement Fund) will receive an additional \$8.1 M.
- the state Excise Police Retirement Fund will receive \$1.3 M *less* revenue.
- cities and towns overall will receive \$2.2 M *less* revenue.

These estimates assume that the number of current permit holders will stay constant. These estimates are based on comparing the new fees and old fees on a cost per year basis.

The decrease in the state Excise Police Retirement Fund (EPR Fund) is a direct result of the repeal of the employee permit fee. The EPR Fund is currently supported in large part by employee permit fees, which generated an estimated \$1.5 M in FY 2004. The decrease in the revenue going to cities and towns is purely a result of the bill's change in the distribution of retailer and dealer permit fees. The table below shows the changes in distribution and the shifts in revenue in more detail.

| Retailer/Dealer Permit | | | | |
|--------------------------------|--------------|---------------|--------------|----------------------|
| Current Distribution | Current Fees | Change | New Fees | New Distribution |
| General Fund 1/3 | \$3,147,750 | \$929,000 | \$4,076,750 | 25% to General Fund |
| Cities and Towns 2/3 | \$6,295,500 | \$(2,218,750) | \$4,076,750 | 25% Cities and Towns |
| Enforcement Fund <i>NONE</i> | \$0 | \$8,153,500 | \$8,153,500 | 50% Enforcement Fund |
| Salesmen Permit | | | | |
| All General Fund | \$27,310 | \$13,655 | \$40,965 | 60% General Fund |
| Enforcement Fund <i>NONE</i> | \$0 | \$27,310 | \$27,310 | 40% Enforcement Fund |
| Tobacco Certificates | | | | |
| General Fund | \$412,500 | \$148,500 | \$561,000 | General Fund |
| Employee and Volunteer Permits | | | | |
| Excise Retirement | \$1,538,070 | \$(1,423,860) | \$114,210 | Excise Retirement |
| Temporary Bartender Permit | | | | |
| Enforcement Fund | \$60,244 | \$90,366 | \$150,610 | Excise Retirement |
| TOTALS by FUND | | | | |
| | Current Fees | Change | New Fees | |
| TOTAL REVENUE | \$11,481,374 | \$5,719,721 | \$17,201,095 | TOTAL REVENUE |
| General Fund | \$3,587,560 | \$1,091,155 | \$4,678,715 | General Fund |
| Enforcement Fund | \$60,244 | \$8,120,566 | \$8,180,810 | Enforcement Fund |
| Excise Retirement | \$1,538,070 | \$(1,273,250) | \$264,820 | Excise Retirement |
| Cities and Towns | \$6,295,500 | \$(2,218,750) | \$4,076,750 | Cities and Towns |

The bill also changes the distribution of the 3-way permit fees received under IC 7.1-3-20-16. The bill would require that any revenue from these 3-way permits be distributed in the Enforcement Fund. The 3-way permits referred to in this section of the Indiana Code are all 3-way permits that have been granted outside the current permit quota requirements. This revenue would include the estimated \$250,000 from the 10 additional permits granted to Clarksville and Jeffersonville. The revenue that would be shifted under this section would be in addition to the revenue shifts from above.

Overall, the shift in revenue would, at most, be between approximately \$250,000 and \$350,000 for FY 2006. Currently, one-third of this revenue goes to the state General Fund and two-thirds goes to cities and towns. Under the bill, all of this revenue would go to the Enforcement Fund. The revenue shift will reduce to between \$50,000 and \$100,000 after the additional 10 permits to Clarksville and Jeffersonville are issued. This is a result of the difference in the initial fee of \$25,000 versus the renewal fee of \$5,000 for the 10 new permits. The other 3-way permits that fall under IC 7.1-3-20-16 would be charged \$1,500 (the 3-way fee as increased by the bill).

Explanation of Local Expenditures:

Explanation of Local Revenues: (Revised) If additional court actions are filed and a judgment is entered, local governments would receive revenue from court fees. However, any additional revenue is likely to be small. Also see *Explanation of State Revenues (Permit Fee Distributions)*.

State Agencies Affected: Alcohol and Tobacco Commission.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Dave Heath, Chairman, Alcohol and Tobacco Commission; 317-232-2444.

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